

MONTANA LEGISLATIVE HISTORY

Chapter 569 19 87

Bill H 210 S _____

Original bill & history / c

H. Committee on E. A. + G. A.

Hearing Date(s) 1/22 _____ c

1/27 ✓ c

_____ c

_____ c

Date Out _____ c

S. Committee on E. A. + G. A.

Hearing Date(s) 3/10 1 c

_____ c

_____ c

_____ c

Did this bill originate in an interim committee? _____ Yes / No

Committee _____

Report _____

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lv

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HOUSE FINAL STATUS

1/14 REFERRED TO JUDICIARY
 1/22 HEARING
 2/03 COMMITTEE REPORT--BILL PASSED AS AMENDED
 2/05 2ND READING PASSED 90 4
 2/06 3RD READING PASSED 97 1

TRANSMITTED TO SENATE
 2/10 REFERRED TO JUDICIARY
 3/23 HEARING
 3/26 COMMITTEE REPORT--BILL CONCURRED AS AMENDED
 3/28 2ND READING CONCURRED 50 0
 3/30 3RD READING CONCURRED 50 0

RETURNED TO HOUSE WITH AMENDMENTS
 4/07 2ND READING AMENDMENTS CONCURRED 83 0
 4/08 3RD READING AMENDMENTS CONCURRED 91 0
 4/10 SIGNED BY SPEAKER
 4/11 SIGNED BY PRESIDENT

4/11 TRANSMITTED TO GOVERNOR
 4/16 SIGNED BY GOVERNOR
 CHAPTER NUMBER 507 EFFECTIVE DATE: 10/01/87

HB 208 INTRODUCED BY ADDY
 ALLOWING STATE OIL LESSEES TO DEDUCT PROPORTIONALLY
 OIL TRANSPORTATION COSTS
 BY REQUEST OF DEPARTMENT OF STATE LANDS

1/14 INTRODUCED
 1/14 REFERRED TO NATURAL RESOURCES
 1/14 FISCAL NOTE REQUESTED
 1/20 FISCAL NOTE RECEIVED
 1/21 HEARING
 1/26 COMMITTEE REPORT--BILL PASSED AS AMENDED
 1/29 2ND READING PASSED 95 0
 1/30 3RD READING PASSED 98 0

TRANSMITTED TO SENATE
 2/02 REFERRED TO NATURAL RESOURCES
 3/04 HEARING
 3/05 COMMITTEE REPORT--BILL CONCURRED
 3/09 2ND READING CONCURRED 50 0
 3/11 3RD READING CONCURRED 50 0

RETURNED TO HOUSE
 3/14 SIGNED BY SPEAKER
 3/14 SIGNED BY PRESIDENT
 3/16 TRANSMITTED TO GOVERNOR
 3/19 SIGNED BY GOVERNOR
 CHAPTER NUMBER 136 EFFECTIVE DATE: 10/01/87

HB 209 INTRODUCED BY GILBERT
 LIMIT RECOVERY FOR NONECONOMIC DAMAGES

1/14 INTRODUCED
 1/14 REFERRED TO JUDICIARY
 1/21 HEARING
 2/19 TABLED IN COMMITTEE

HB 210 INTRODUCED BY GRADY, ET AL.
 REQUIRE INVESTIGATION OF GAME DAMAGE COMPLAINT
 WITHIN 48 HOURS

HOUSE FINAL STATUS

1/14 INTRODUCED
 1/14 REFERRED TO FISH & GAME
 1/22 HEARING
 1/29 COMMITTEE REPORT--BILL PASSED AS AMENDED
 1/31 2ND READING PASSED 94 0
 2/02 3RD READING PASSED 96 2

TRANSMITTED TO SENATE
 2/03 REFERRED TO FISH & GAME
 3/10 HEARING
 3/11 COMMITTEE REPORT--BILL CONCURRED AS AMENDED
 3/16 2ND READING CONCURRED 50 0
 3/18 3RD READING CONCURRED 47 3

RETURNED TO HOUSE WITH AMENDMENTS
 3/25 2ND READING AMENDMENTS NOT CONCURRED 72 20
 3/25 FREE CONFERENCE COMMITTEE APPOINTED
 4/03 FREE CONFERENCE COMMITTEE REPORT
 4/08 2ND READING FREE CONFERENCE COMMITTEE
 REPORT ADOPTED 72 0
 4/09 3RD READING FREE CONFERENCE COMMITTEE
 REPORT ADOPTED 96 1

SENATE
 3/26 FREE CONFERENCE COMMITTEE APPOINTED
 4/03 FREE CONFERENCE COMMITTEE REPORT
 4/04 2ND READING FREE CONFERENCE COMMITTEE
 REPORT ADOPTED 49 0
 4/06 3RD READING FREE CONFERENCE COMMITTEE
 REPORT ADOPTED 46 2

4/14 SIGNED BY SPEAKER
 4/15 SIGNED BY PRESIDENT

4/15 TRANSMITTED TO GOVERNOR
 4/20 SIGNED BY GOVERNOR
 CHAPTER NUMBER 569 EFFECTIVE DATE: 10/01/87

HB 211 INTRODUCED BY DEVLIN
 PROHIBIT HARASSMENT OF SPORTSMEN

1/14 INTRODUCED
 1/14 REFERRED TO FISH & GAME
 1/22 HEARING
 1/23 COMMITTEE REPORT--BILL PASSED AS AMENDED
 1/27 2ND READING PASSED 73 23
 1/28 3RD READING PASSED 76 23

TRANSMITTED TO SENATE
 1/29 REFERRED TO FISH & GAME
 3/12 HEARING
 3/27 COMMITTEE REPORT--BILL CONCURRED AS AMENDED
 3/28 2ND READING CONCURRED 49 1
 3/30 3RD READING CONCURRED 48 2

RETURNED TO HOUSE WITH AMENDMENTS
 4/07 2ND READING AMENDMENTS CONCURRED 82 0
 4/08 3RD READING AMENDMENTS CONCURRED 88 3
 4/10 SIGNED BY SPEAKER
 4/10 SIGNED BY PRESIDENT

4/10 TRANSMITTED TO GOVERNOR
 4/15 SIGNED BY GOVERNOR
 CHAPTER NUMBER 492 EFFECTIVE DATE: 10/01/87

1 *Connelly* *HB* BILL NO. *210* *Along*
 2 INTRODUCED BY *Sen. Jones* *Rep. Hirsch* *Sen. Smith*
 3 *Sen. Jones* *Rep. Hirsch* *Sen. Smith*
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO REQUIRE THE
 5 DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO INVESTIGATE GAME
 6 DAMAGE COMPLAINTS WITHIN 48 HOURS; AND AMENDING SECTION
 7 87-1-225, MCA."
 8

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 Section 1. Section 87-1-225, MCA, is amended to read:

11 "87-1-225. Regulation of wild animals damaging
 12 property. ~~Upon the~~ Within 48 hours after receiving a request
 13 or complaint of from any landholder or person in possession
 14 and having charge of any land in the state that wild animals
 15 of the state, protected by the fish and game laws and
 16 regulations, are doing damage to the property or crops
 17 thereon, the department shall investigate and study the
 18 situation with respect to damage and depredation. The
 19 department may then decide to open a special season on the
 20 game or, if the special season method be not feasible, the
 21 department may destroy the animals causing the damage. The
 22 department may authorize and grant the holders of said
 23 property permission to kill or destroy a specified number of
 24 the animals causing the damage. No wild ferocious animal
 25 damaging property or endangering life shall be covered by

1 this section."

2 NEW SECTION. Section 2. Extension of authority.
 3 existing authority of the department of fish, wildlife
 4 parks to make rules on the subject of the provisions of
 5 act is extended to the provisions of this act.

-End-

HOUSE OF REPRESENTATIVES
FISH AND GAME COMMITTEE
50TH LEGISLATIVE SESSION

1987

Committee Members

District

Rep. Orval Ellison, Chairman	81
Rep. Marian Hanson, Vice Chairman	100
Rep. Ray Brandewie	49
Rep. Tom Bulger	37
Rep. John Cobb	42
Rep. Fritz Daily	69
Rep. Gene DeMars	29
Rep. Jerry Driscoll	92
Rep. Leo Giacometto	24
Rep. Ed Grady	47
Rep. Loren Jenkins	13
Rep. Vernon Keller	83
Rep. Janet Moore	65
Rep. Bob Pavlovich	15
Rep. Mary Lou Peterson	1
Rep. John Phillips	33
Rep. Paul Rapp-Svrcek	51
Rep. Bob Ream	54

Secretary

Lisa Routzhan

Staff

Dave Cogley

STATUS SHEET

50TH LEGISLATIVE SESSION

FISH AND GAME COMMITTEE

COMMITTEE

BILL NUMBER	ENTERED COM. DATE	DATE CON- SIDERED	OUT OF COM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMENDED DATE	DO NOT PASS AS AMENDED DATE	BE CON- CURRED IN DATE	BE NOT CON- CURRED IN DATE	BE CON- CURRED IN AMENDED DATE	BE NOT CONCURRE IN AS AMENDED DATE
B 16	1-8-87	1-8-87	TABLED 2	19-87							
B 33	1-8-87	1-8-87	1-8-87	1-8-87							
B 64	1-13-87	1-13-87				1-13-87					
B 93	1-13-87	1-13-87	1-13-87	1-13-87							
B 104	1-15-87	1-15-87	2-17-87		2-17-87						
B 131	1-15-87	1-15-87	1-22-87	1-22-87							
B 137	1-20-87	1-20-87	TABLED 2	19-87							
B 183	1-20-87	1-20-87	1-27-87			1-27-87					
210	1-22-87	1-22-87	1-27-87			1-27-87					
211	1-22-87	1-22-87	1-22-87			1-22-87					
247	1-27-87	1-27-87	TABLED 2	19-87							
266	1-27-87	1-27-87	1-29-87			1-29-87					
298	2-10-87	2-10-87	2-10-87			2-10-87					
307	2-10-87	2-10-87	TABLED 2	10-87							

a separate sheet for Senate Bills, House Bills, and Resolutions.

Hearing on HB 211 closed.

HOUSE BILL NO. 210: Rep. Ed Grady, District #47, sponsor, stated HB 210 was a simple bill which dealt with some problems people have had with game damage violations and getting the department to come out soon enough to save a crop of alfalfa seed or a haystack. In some instances, the department did not come out for three or four days, sometimes longer, thus causing landowners to lose many expensive crops. All HB 210 did is shorten up the time they would have to come out and address the problem. The Fish and Game did have an amendment, changing HB 210, that presently may be too harsh stating the department had to study a situation and come up with some conclusion within 48 hours. This puts stress on the department because sometimes, they may consider a number of different alternatives before making a final decision.

PROPOSERS: Dick Johnson, Deputy Director, Department of Fish, Wildlife and Parks, distributed testimony (Exhibit 4). He stated Mr. Flynn could not be there, so Mr. Johnson presented his prepared statement for him. He stated each year the department receives a number of game damage complaints. With few exceptions, the 48 hour goal had been met. The few occasions it was not met were usually the result of having received several complaints at one time or a complication with the 40 hour limitation for Enforcement personnel. The recent court rulings which require overtime for enforcement hours in excess of 40 each week have hampered their abilities in a number of response areas, including game damage. Making the 48 hour requirement statutory would not change the circumstances under which they currently attempt to meet their goal. They suggest a change in the bill that would address the intent of HB 210 and those few instances where it would not be possible to "investigate and study" within 48 hours. Page 1, line 17, following the word "shall", insert the words "arrange to". Their guidelines would still apply and the complaints, in most instances, would still be responded to in 48 hours. However, it was literally impossible to assure that they could investigate and study, within 48 hours, each complaint every year.

Robert Van Der Vere, concerned citizen lobbyist, felt he was part of the reason the bill was drafted after receiving several complaints from landowners stating the department people never even made a trip out to investigate. HB #210 was simply doing some housekeeping on the law, and he stated there are a sufficient amount of people in the department to get the job done.

Rep. Ray Brandewie stated he would like to go on record as supporting HB 210. However, he felt the 48-hour time frame

should remain in the bill. The 48 hours may be too restrictive regarding degradation on your range; however, in the Christmas tree business, 48 hours can mean thousands of dollars of damage. The time limit could also mean severe damage for people who grew seed crops, particularly clover or alfalfa.

PROPONENTS: Janet Ellis, representing the Montana Audubon Legislative Fund submitted testimony (Exhibit 5). She stated although MALF agrees in principle with what HB 210 asks, they cannot support the legislation because of the liability put on the DFWP. It is already department policy to respond to game damage complaints within 48 hours. If the department person who received the complaint was unable to respond within 48 hours, he would immediately refer the complaint to the nearest department employee who could respond within a 48-hour period. Their research told them the department was doing an excellent job at responding to game damage complaints within 48-hours. There is no penalty section in HB 210. The bill, however, demands the department respond within 48 hours. They can only conclude that the department could be liable in those rare cases when they could not respond so quickly.

Rep. Pavlovich asked what would happen if they did not respond at all to a complaint.

Rep. Grady stated nothing really happened, but it did give the landowner a little bit more encouragement that the department should be out there within 48 hours, so he can complain that he did not have anyone out there. It strengthens the statute, and it would make the landowner feel better knowing there is a statute there.

Rep. Pavlovich wondered if the department had ever reimbursed the landowner for any damages they may have sustained.

Dick Johnson stated not to his knowledge. However, the department had given landowners supplies and had helped alleviate by mending some fences.

Rep. Jenkins asked approximately how many complaints they received per year.

Rep. Johnson replied it depended greatly on the weather. The average was about 400-500 a year.

Rep. Jenkins then asked how many employees did the department have overall.

Dick Johnson stated they had 500 FTE's, a good share of those are summer employees they use for the parks temporarily.

In closing, Rep. Grady stated it had been hard being convinced that the 48 hours did anything more than establish department policy. They have set 48 hours as their policy. HB 210 simply made it state statute, and in essence, sent a message to the Legislature that there was a problem out there and they were directing the department to address the problem to whomever it needed to be addressed by. HB 210 was not a costly bill, which required no more FTE's. The main objective was to make contact with the person in the field, so it could be reported to the department and in turn, they could get there and investigate.

Hearing closed on HB 210.

THE HEARING ON HB 137 WAS RE-OPENED: Jim Flynn, Director of Fish, Wildlife and Parks, spoke as a proponent to the bill and distributed testimony (Exhibit 6). Mr. Flynn was unable to attend the January 20, 1987 meeting, so Chairman Ellison recessed the hearing on HB 137 so he could testify today.

Mr. Flynn stated HB 137 proposed three changes of interest to the DFWP. It increased the number of nonresident licenses from 17,000 to 31,000; it broke up the nonresident big game combination licenses, and generated an additional \$1 million per year from the sale of nonresident big game licenses. As previous testimony indicated, DFWP agreed with the concept that more nonresident licenses could be authorized by the law. We have estimated the impact of the bill upon deer and elk, which statistics indicated, would not have a drastic effect upon the state's wildlife population. With respect to breaking up the combination license, DFWP had administered the sale of the 17,000 combination licenses since its inception nearly a decade ago.

The majority of the nonresidents whom they have pulled through the years favor that license. However, at the same time, they hear complaints from nonresidents who only wished to hunt deer and had to purchase the combination license in order to pursue that particular game animal. The additional revenues the bill contemplated from the sale of licenses were not needed for the department's operational budget. They strongly suggested, if such increases are to be considered, they be earmarked for leasing, purchase of conservation easements or fee title purchase of wildlife habitat in the state.

Mr. Flynn stated they were referring to those headed under the term "management purposes". For the resident it would be the A-3 and A-4, and for the nonresident, B-7 and B-8.

Rep. Ream stated there may have been some confusion and still was, regarding the phrase "for game management purposes", and wondered if it was used elsewhere in the statutes.

Dave Cogley, Researcher, stated he was not aware that the term was used elsewhere.

The re-opened hearing on HB 183 was closed.

Rep. Grady then asked Chairman Ellison if he would permit Mr. Flynn to make comments on HB 210 and HB 211 that were heard previously when Mr. Flynn was unable to be present. Chairman Ellison had no objections to that.

QUESTIONS (OR DISCUSSION) ON HOUSE BILL NO. 210: Director Flynn stated they did support HB 210 and had no problem with the contact within 48 hours, as stated in prior testimony. The department did make, for the majority of the time, response to the call in that period of time. However, if the law was read, it states they shall study and investigate within 48 hours. That was not possible 100% of the time, prompting the suggested amendment.

QUESTION (OR DISCUSSION) ON HOUSE BILL NO. 211: Mr. Flynn stated the type of legislation was becoming more and more prevalent throughout the western states. As referenced in testimony, they did have the situation before them, when the buffalo hunt was enacted. He stated the department went through all the law enforcement steps necessary to prevent any problems and felt with a bill like HB 211, those kind of things could possibly be avoided. There was no immediate pressing need for it, but it was something they had already had a brush with and could happen any time. The bison are extremely popular and the hunt is extremely unpopular in the eastern part of the country, and could have the same set of circumstances surface again.

EXECUTIVE SESSION

HOUSE BILL NO. 131: Rep. Giacometto moved HB 131 DO PASS. Question was called. The motion CARRIED, with Reps. Grady and DeMars voting no.

HOUSE BILL NO. 211: Rep. Giacometto moved HB 211 DO PASS. Rep. Rapp-Svrcek moved to amend HB 211. See Standing Committee Report No. 1.

DAILY ROLL CALL

FISH & GAME

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date JANUARY 22, 1987

NAME	PRESENT	ABSENT	EXCUSED
ORVAL ELLISON, CHAIRMAN	X		
MARIAN HANSON, VICE CHAIRMAN	X		
RAY BRANDEWIE	X		
TOM BULGER	X		
JOHN COBB	X		
FRITZ DAILY	X		
GENE DEMARS	X		
JERRY DRISCOLL	X		
LEO GIACOMETTO	X		
ED GRADY	X		
LOREN JENKINS	X		
VERNON KELLER	X		
JANET MOORE	X		
BOB PAVLOVICH	X		
MARY LOU PETERSON	X		
JOHN PHILLIPS	X		
PAUL RAPP-SVRCEK	X		
BOB REAM	X		
STAFF: DAVE COGLEY			

HB 210
January 22, 1987

Testimony presented by Jim Flynn, Dept. of Fish, Wildlife & Parks

The department established in 1985 guidelines for our personnel to follow regarding game damage complaints. Following is the first paragraph from our Department Guidelines for Big Game Damage Procedures:

"The Department of Fish, Wildlife & Parks will respond to a damage complaint as soon as possible, and within 48 hours. If the department person who received the complaint is unable to respond within 48 hours, he will immediately refer the complaint to the nearest department employee who can respond within a 48-hour period. Exceptions can be made if complainant is agreeable to a longer waiting period."

Each year the department receives a number of game damage complaints. With few exceptions, the 48-hour goal has been met. The few occasions it is not met are usually the result of having received several complaints at one time or a complication with the 40-hour limitation for Enforcement personnel. The recent court rulings which require overtime for enforcement hours in excess of 40 each week have hampered our abilities in a number of response areas, including game damage. Making the 48-hour requirement statutory would not change the circumstances under which we currently attempt to meet our goal.

We would suggest a change in the bill which we feel would address the intent of the bill and addresses those few instances when it would not be possible to "investigate and study" within 48 hours:

On page 1, line 17, following the word "shall," insert the words "arrange to."

Our guidelines would still apply and the complaints in most instances would still be responded to in 48 hours. However, it is literally not possible to assure that we could investigate and study within 48 hours each complaint every year.

With this amendment, a more realistic law would be at hand.

GUIDELINES FOR
DEPARTMENT OF FISH, WILDLIFE & PARKS
BIG GAME DAMAGE PROCEDURES

September 30, 1985

By law, the department is required to respond to all big game damage complaints. Big game damage is a department-wide responsibility, and personnel from all divisions will share a responsibility in responding to complaints. Regional supervisors will be responsible to coordinate efforts within regions. Regional biologists and game wardens will familiarize themselves with areas and circumstances where depredation might occur. General hunting seasons will remain a primary tool to deal with population numbers to address potential game damage problems.

The following procedures will be used to address and prevent game damage problems:

1. The DFWP will respond to a damage complaint as soon as possible, and within 48 hours. If the department person who received the complaint is unable to respond within 48 hours, he will immediately refer the complaint to the nearest department employee who can respond within a 48-hour period. Exceptions can be made if complainant is agreeable to a longer waiting period.
 - A. The DFWP will respond to all damage complaints under this policy with the exception of 1B. A phone call or on-site visit constitutes an immediate response under this provision.
 - B. Damage caused by nongame, furbearing, or federally listed threatened and endangered species are not covered by this policy, but will continue to be addressed on a case-by-case basis.
2. The DFWP shall make a written record of each complaint. This form must include action(s) taken or recommended. A copy of the investigator's report will be left with the landowner if so desired. This report will be submitted on all complaints, including those which required no immediate action. Such reports will be submitted to the administrator of the Field Services Division, regional supervisors, regional game managers and warden captains. A central game damage file will be maintained at the Field Services Division office in Helena. Each region will maintain a complete game damage file and it is the responsibility of the regional supervisor to keep it updated.

Report forms for recording game damage complaints will be prepared and distributed by the Field Services Division administrator.

3. Several courses of action can be initiated by the regional supervisor in response to legitimate damage complaints. A summary of potential options follows:

A. Special seasons. These will be used under the following conditions:

- (1) A time frame of mid-August through February.
- (2) Reasonable hunter access is available to allow for harvest of problem animals.
- (3) There are enough animals involved to justify public hunting.
- (4) It is a recurring problem, and animals are normally unavailable during the general season.
- (5) Special seasons to reduce numbers are a priority option if the land is posted against hunting, fee hunting is taking place, or the hunting rights are leased.

B. Herding: As a temporary measure, herding may be employed where effective.

C. Dispersal: A variety of animal dispersal methods may be employed, such as airplanes, snowmobiles, cracker shells, scareguns, and other scare tactic devices.

D. Repellents: Bloodmeal and other repellents can be employed as temporary solutions under appropriate conditions.

E. Fencing: If the problem is chronic and involves haystacks, various fencing options can be utilized:

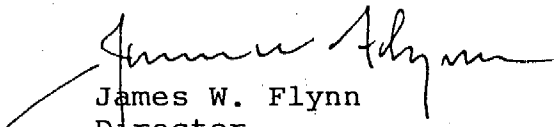
1. Permanent stackyards. In cases where records show haystack damage occurs annually, permanent stackyards are the best solution. The department will furnish the property owner with posts and wire. It will be the landowner's responsibility to construct the fence and to provide proper maintenance.

In situations where stackyards enclose several acres, particularly those surrounding round bales, permanent stackyards may not be the most desirable treatment of the problem. (See 2.)

2. Electric fencing. In situations where a large area is being used for a stackyard, such as round bale storage, electric fencing may be the most feasible solution. The department will provide the charger and fencing materials. On the initial installation, the department will assist in setting up the fence. The storage and care of this equipment is the responsibility of the rancher, and with proper care, materials should last three years. If game damage does not recur in succeeding winters, the department will pick up the charger for use in other areas.
 3. Snowfence. If a haystack has straight sides, 4 or 6 ft snowfence works well, or in the case of elk, 8 ft panels may be used. It is reasonable to assume the snowfence or panels will last for a minimum of three winters if properly cared for. Rolling and storage are the rancher's responsibility. Depending upon the size of the area and availability, the department will furnish the snowfence or panels, and the property owner will be responsible to put it up, take it down, and provide maintenance.
 4. It will be the responsibility of the landowner to store materials furnished by the department in a manner consistent with proper care with reasonable wear expected. A signed agreement with the landowner will record any planned actions and serve as a receipt for any provided materials. These agreements will be sent to the individuals outlined in Item 2. Fence fabric shall be returned to the department when it is no longer needed for wildlife depredation protection. Materials will be replenished when reasonable wear makes them ineffective.
- F. Kill Permits: In certain situations, a kill permit may be considered to be the best immediate solution and may be activated without first exhausting any of the previously mentioned methods. Authorization for kill permits may be expedited by a phone call to Helena (Director's Office, Enforcement or Field Services).
- G. In specialized situations, netting or mechanical devices may be used to reduce tree damage.
4. Bulletins - The Field Services Division Administrator will be responsible to develop:

- A. A bulletin for landowners informing them of preventive methods they can initiate to reduce game damage problems as well as assistance they can receive from this department (by Fall 1986).
 - B. A manual of techniques for department personnel, including an updated literature review for new game damage methods for preventing, minimizing, or solving game damage problems (by Fall 1986). Updates will be provided following annual review of new techniques.
5. The department has the responsibility to address all game damage complaints; however, assistance may be discontinued to a landowner who continues to aggravate game damage problems by closing or leasing his property to hunting in succeeding years or when reasonable suggestions, actions or remedies offered by the department have been refused. The decision to terminate assistance will be made by the director's office after reviewing the circumstances.
6. Evaluation - Administrators, supervisors, regional game managers, and warden captains will annually review and evaluate game damage methods to see if such methods and materials being utilized are properly addressing depredation problems. This evaluation will include an annual review of hunting regulations, quotas, etc., to ascertain their effectiveness in properly attempting to prevent game damage problems.

APPROVED:


James W. Flynn
Director

Montana
Audubon Legislative Fund

EXHIBIT 5
DATE 1-22-87
HB 210

Mr. Chairman and Members of the Committee,

My name is Janet Ellis and I'm here today representing the Montana Audubon Legislative Fund. The Audubon Fund is composed of members of the National Audubon Society, which includes 2500 members in nine chapters located throughout the state.

The Audubon Fund must go on record in opposition to HB 210. Although we agree in principle with what HB 210 asks, we can not support this legislation because of the liability this legislation puts on the Department of Fish, Wildlife & Parks.

It is already the Department's policy to respond to game damage complaints within 48 hours. I would like to draw your attention to the Department's "Guidelines for Department of Fish, Wildlife & Parks Big Game Damage Procedures." This policy paper specifically states "The DFWP will respond to a damage complaint as soon as possible, and within 24 hours. If the department person who received the complaint is unable to respond within 48 hours, he will immediately refer the complaint to the nearest department employee who can respond within a 48-hour period. Exceptions can be made if complainant is agreeable to a longer waiting provision."

Our research tells us that the Department is doing an excellent job at responding to game damage complaints within 48-hours. Because of this we have closely examined what HB 210 could mean for the Department. There is no penalty section in HB 210. This bill does, however, demand that the Department respond within ~~24~~⁴⁸ hours. We can only conclude that the Department could be liable in those rare cases when they cannot respond so quickly. For this reason we ask that you give HB 210 a "do not pass."

Thank you.

GUIDELINES FOR
DEPARTMENT OF FISH, WILDLIFE & PARKS
BIG GAME DAMAGE PROCEDURES

September 30, 1985

By law, the department is required to respond to all big game damage complaints. Big game damage is a department-wide responsibility, and personnel from all divisions will share a responsibility in responding to complaints. Regional supervisors will be responsible to coordinate efforts within regions. Regional biologists and game wardens will familiarize themselves with areas and circumstances where depredation might occur. General hunting seasons will remain a primary tool to deal with population numbers to address potential game damage problems.

The following procedures will be used to address and prevent game damage problems:

- NOTE: 1. The DFWP will respond to a damage complaint as soon as possible, and within 48 hours. If the department person who received the complaint is unable to respond within 48 hours, he will immediately refer the complaint to the nearest department employee who can respond within a 48-hour period. Exceptions can be made if complainant is agreeable to a longer waiting period.

A. The DFWP will respond to all damage complaints under this policy with the exception of 1B. A phone call or on-site visit constitutes an immediate response under this provision.

B. Damage caused by nongame, furbearing, or federally listed threatened and endangered species are not covered by this policy, but will continue to be addressed on a case-by-case basis.

2. The DFWP shall make a written record of each complaint. This form must include action(s) taken or recommended. A copy of the investigator's report will be left with the landowner if so desired. This report will be submitted on all complaints, including those which required no immediate action. Such reports will be submitted to the administrator of the Field Services Division, regional supervisors, regional game managers and warden captains. A central game damage file will be maintained at the Field Services Division office in Helena. Each region will maintain a complete game damage file and it is the responsibility of the regional supervisor to keep it updated.

Report forms for recording game damage complaints will be prepared and distributed by the Field Services Division administrator.

3. Several courses of action can be initiated by the regional supervisor in response to legitimate damage complaints. A summary of potential options follows:

A. Special seasons. These will be used under the following conditions:

- (1) A time frame of mid-August through February.
- (2) Reasonable hunter access is available to allow for harvest of problem animals.
- (3) There are enough animals involved to justify public hunting.
- (4) It is a recurring problem, and animals are normally unavailable during the general season.
- (5) Special seasons to reduce numbers are a priority option if the land is posted against hunting, fee hunting is taking place, or the hunting rights are leased.

B. Herding: As a temporary measure, herding may be employed where effective.

C. Dispersal: A variety of animal dispersal methods may be employed, such as airplanes, snowmobiles, cracker shells, scareguns, and other scare tactic devices.

D. Repellents: Bloodmeal and other repellents can be employed as temporary solutions under appropriate conditions.

E. Fencing: If the problem is chronic and involves haystacks, various fencing options can be utilized:

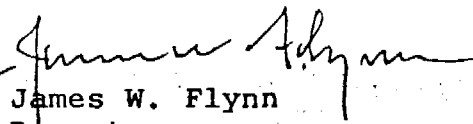
1. Permanent stackyards. In cases where records show haystack damage occurs annually, permanent stackyards are the best solution. The department will furnish the property owner with posts and wire. It will be the landowner's responsibility to construct the fence and to provide proper maintenance.

In situations where stackyards enclose several acres, particularly those surrounding round bales, permanent stackyards may not be the most desirable treatment of the problem. (See 2.)

2. Electric fencing. In situations where a large area is being used for a stackyard, such as round bale storage, electric fencing may be the most feasible solution. The department will provide the charger and fencing materials. On the initial installation, the department will assist in setting up the fence. The storage and care of this equipment is the responsibility of the rancher, and with proper care, materials should last three years. If game damage does not recur in succeeding winters, the department will pick up the charger for use in other areas.
 3. Snowfence. If a haystack has straight sides, 4 or 6 ft snowfence works well, or in the case of elk, 8 ft panels may be used. It is reasonable to assume the snowfence or panels will last for a minimum of three winters if properly cared for. Rolling and storage are the rancher's responsibility. Depending upon the size of the area and availability, the department will furnish the snowfence or panels, and the property owner will be responsible to put it up, take it down, and provide maintenance.
 4. It will be the responsibility of the landowner to store materials furnished by the department in a manner consistent with proper care with reasonable wear expected. A signed agreement with the landowner will record any planned actions and serve as a receipt for any provided materials. These agreements will be sent to the individuals outlined in Item 2. Fence fabric shall be returned to the department when it is no longer needed for wildlife depredation protection. Materials will be replenished when reasonable wear makes them ineffective.
- F. Kill Permits: In certain situations, a kill permit may be considered to be the best immediate solution and may be activated without first exhausting any of the previously mentioned methods. Authorization for kill permits may be expedited by a phone call to Helena (Director's Office, Enforcement or Field Services).
- G. In specialized situations, netting or mechanical devices may be used to reduce tree damage.
4. Bulletins - The Field Services Division Administrator will be responsible to develop:

- A. A bulletin for landowners informing them of preventive methods they can initiate to reduce game damage problems as well as assistance they can receive from this department (by Fall 1986).
 - B. A manual of techniques for department personnel, including an updated literature review for new game damage methods for preventing, minimizing, or solving game damage problems (by Fall 1986). Updates will be provided following annual review of new techniques.
5. The department has the responsibility to address all game damage complaints; however, assistance may be discontinued to a landowner who continues to aggravate game damage problems by closing or leasing his property to hunting in succeeding years or when reasonable suggestions, actions or remedies offered by the department have been refused. The decision to terminate assistance will be made by the director's office after reviewing the circumstances.
6. Evaluation - Administrators, supervisors, regional game managers, and warden captains will annually review and evaluate game damage methods to see if such methods and materials being utilized are properly addressing depredation problems. This evaluation will include an annual review of hunting regulations, quotas, etc., to ascertain their effectiveness in properly attempting to prevent game damage problems.

APPROVED:


James W. Flynn
Director

FISH AND GAME

BILL NO. HB 210; HB 211

DATE JANUARY 22, 1987

SPONSOR GRADY; DEVLIN

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Rep. Pavlovich asked Mr. Flynn that when the set aside was established, there must have been public comment, and wanted to know what process was needed to inform the public of a change being made with the department.

Mr. Flynn stated when the department embarked on this process in the fall of 1985, we did follow the law. There is a procedure in the law that states when an agency takes this type of action, you have to notice the public regarding this action, and give a certain amount of time for public comment, before a final decision is made. The department did adhere to this.

Rep. Ream asked Mr. Flynn what involvement the commission had throughout the process.

Mr. Flynn stated the law is fairly clear that the commission has certain authorities and responsibilities as does the department, and within that legal framework, we are still a hand and glove operation.

The hearing closed on HB 247.

EXECUTIVE SESSION

HOUSE BILL NO. 183: Rep. Ellison moved HB 183 DO PASS. Rep. Bulger moved the amendment on HB 183 DO PASS. Question being called on the amendment, the motion carried unanimously. See Standing Committee Report Nos. 1, 2 and 3. Rep. Brandewie moved HB 183 DO PASS AS AMENDED. Question being called, the motion carried unanimously.

HOUSE BILL NO. 210: Rep. Grady moved HB 210 DO PASS. Rep. Rapp-Svrcek moved to amend HB 210. Question being called on the amendment, the motion carried unanimously. See Standing Committee Report No. 1. Rep. Brandewie moved HB 210 DO PASS AS AMENDED. Question being called, the motion carried unanimously.

ADJOURNMENT: Being no further business, the meeting was adjourned at 2:55 p.m.


ORVAL ELLISON, CHAIRMAN

DAILY ROLL CALL

FISH & GAME

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date Jan. 27, 1987

NAME	PRESENT	ABSENT	EXCUSED
ORVAL ELLISON, CHAIRMAN	X		
MARIAN HANSON, VICE CHAIRMAN	X		
RAY BRANDEWIE	X		
TOM BULGER	X		
JOHN COBB	X		
FRITZ DAILY	X		
GENE DEMARS	X		
JERRY DRISCOLL	X		
LEO GIACOMETTO	X		
ED GRADY	X		
LOREN JENKINS	X		
VERNON KELLER	X		
JANET MOORE	X		
BOB PAVLOVICH	X		
MARY LOU PETERSON	X		
JOHN PHILLIPS	X		
PAUL RAPP-SVRCEK	X		
BOB REAM	X		
STAFF: DAVE COGLEY			

STANDING COMMITTEE REPORT

JANUARY 28

19 37

Mr. Speaker: We, the committee on FISH AND GAME

report HB 210

☒ do pass

☐ do not pass

☐ be concurred in

☐ be not concurred in

☒ as amended

☐ statement of intent attached

Chairman

"AN ACT TO REQUIRE THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS
TO INVESTIGATE GAME DAMAGE COMPLAINTS WITHIN 48 HOURS; AND
AMENDING SECTION 37-1-225, MCA."

1. Page 1, line 17.

Following: "and"

Insert: "arrange to"

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MONTANA STATE SENATE

FISH AND GAME COMMITTEE

* * * * *

50TH LEGISLATURE

* * * * *

COMMITTEE MEMBERS: SENATOR ED SMITH, CHAIRMAN
 SENATOR WILLIAM YELLOWTAIL,
 VICE - CHAIRMAN
 SENATOR AL BISHOP
 SENATOR ELMER SEVERSON
 SENATOR ESTHER BENGTSON
 SENATOR JUDY JACOBSON
 SENATOR JOHN ANDERSON
 SENATOR GREG JERGESON

STAFF: ANDREA MERRILL

COMMITTEE SECRETARY: MARY FLORENCE ERVING-ROOT

* * * * *

BOOK: 1 of 1

INCLUSIVE DATES: January 10, 1987 through March 31, 1987

SECRETARY-MARY FLORENCE ROOT

BILL NO	REFER DATE	HEARING DATE	CONSIDERATION DATES	COMMITTEE ACTION	REREFERRED TO COMM	DATE OUT
HB0064	1/21	3/05	3-5	CONCUR AS AMENDED		3-5
HANSON, MARIAN BOW HUNTER COMPETENCY TRAINING						
HB0093	1/21	3/05	3-5	CONCUR		3-5
HANSON, MARIAN ALLOW TAKING OF CATFISH WITH LONGBOW AND ARROW						
HB0131	1/28	3/05	3-5	CONCUR		3-5
ELLISON, ORVAL DEPARTMENT OF FISH, WILDLIFE, AND PARKS' AUTHORITY TO SELL EXCESS FISH EGGS						
HB0152	1/28	3/19	3-19	CONCUR AS AMENDED		3-19
BARDANOUE, FRANCIS PROPERTY TAXATION OF LAND OWNED BY DEPARTMENT OF FISH, WILDLIFE, AND PARKS						
HB0183	2/03	3/10	3-10	CONCUR		3-10
ELLISON, ORVAL AUTHORITY OF FISH AND GAME COMMISSION TO SET FEES FOR CERTAIN LICENSES						
HB0210	2/03	3/10	3-10	CONCUR AS AMENDED		3-10
GRADY, ED REQUIRE INVESTIGATION OF GAME DAMAGE COMPLAINT WITHIN 48 HOURS						
HB0211	1/29	3/12	3-12	CONCUR AS AMENDED		3-12
DEVLIN, GERRY PROHIBIT HARASSMENT OF SPORTSMEN						
HB0266	2/04	3/12	3-12	CONCUR		3-12
REAM, BOB AMENDMENT OF ENDANGERED SPECIES LIST						
HB0298	2/17	3/12	3-12	CONCUR		3-12
RAPP-SVRCEK, PAUL RESTRICTIONS ON SPECIAL BIG GAME LICENSES						
HB0322	2/21	3/17	3-17	CONCUR AS AMENDED		3-26
EUDAILY, RALPH ESTABLISH DUI BLOOD ALCOHOL LEVELS/CHEMICAL TESTING FOR BOAT OPERATORS						
HB0329	2/12	3/17	3-17	CONCUR AS AMENDED		3-26
REAM, BOB RESTITUTION FOR ILLEGAL KILLING OF WILDLIFE						

MINUTES OF THE MEETING
FISH AND GAME COMMITTEE
MONTANA STATE SENATE

March 10, 1987

The meeting of the Senate Fish and Game committee was called to order at 1:00 P.M. on March 10, 1987 by Chairman Ed Smith in Room 402 of the State Capitol.

ROLL CALL: All members were present at roll call with the exception of Sen. Bishop, who was excused.

CONSIDERATION OF HOUSE BILL 210: Representative Ed Grady, House District No. 47, sponsor of HB 210, stated that the bill requires the Fish, Wildlife, and Parks Department to investigate game damage within forty-eight hours of the complaint. Because of the minimum winter kill, Montana will see an increase of game damage throughout the state. The complaints heard are those that the department does not take action quick enough after receiving the acknowledgement of the damage. The landowner can receive a large economic damage in a short period of time. Rep. Grady gave an example of elk in a newly seeded alfalfa field. The bill directs the department to employ the manpower to the damaged areas in a faster manner to address the problem. The proposed amendment would read "arrange to investigate". Rep. Grady stated the original intention would be "arrange to" after shall. The department shall arrange to investigate and study the situation. The original means of the bill was not to say that the department had to actually go to the damage and start herding or shooting the game within forty-eight hours, but could employ a number of different means of alleviating the problem within the time period.

PROPOSERS:

Ron Marcoux, Fish Wildlife and Parks Department, gave written testimony to the committee. (Exhibit 1)

Robert Vendervere, a concerned citizen lobbyist, stated the reason the bill was drafted was due to personal efforts. Many complaints from landowners were received because the Fish, Wildlife and Parks personnel did not respond to calls made to the Department. There was an interim legislative committee set up during the 1985 Legislature for various purposes. Although the reports were made previously, the problems were not rectified. At present, there are eighty-seven game wardens with sixty-three people employed in the Wildlife Division. Vendervere feels there are adequate numbers of people working for the Department to take care of the game damage problems at the time they occur.

Janet Ellis, Audubon Legislative Fund, submitted written testimony. (Exhibit 2)

OPPONENTS:

There were no opponents to HB 210.

QUESTIONS FROM THE COMMITTEE

Senator Wm. Yellowtail asked what the recourse is for the landowner who does not get satisfaction. Marcoux replied that if the landowner does not get a response from the department individual that was called, the recourse would be to go to the Fish and Game Commission or to call the main office in Helena. Although complications do arise, the department makes a concentrated effort to take care of the game damage reports as soon as possible.

Senator Bengtson asked what lines of communication are open with the federal government in regards to dealing with wild geese. Because geese are migratory waterfowl, the Animal Damage Control personnel from the state have assumed the responsibility of dealing with game damage problems of the migratory geese. The department interacts with the federal government agencies by trapping birds and moving the birds downstream into areas that do not affect agricultural land activities. Sen. Bengtson reported that efforts to deal with the migratory birds have been unsatisfactory in her constituency. Sen. Bengtson asked if the department pays for the fencing around the haystacks. Marcoux stated that the department works with the landowners in a variety of ways. Sometimes materials are dropped off. Although the materials can be provided, the department prefers to reserve the manpower to be available for other work.

Representative Brady closed by stating there is adequate department personnel throughout the state and the situation can be addressed in a prudent manner. Montanans are getting serious economic damage, and the state must be responsible to address the damage in a short period of time.

Senator Smith closed the hearing on HB 210.

CONSIDERATION OF HOUSE BILL 183: Representative Orval Ellison, House District No. 81, stated the bill was drafted at the request of the Department of Fish, Wildlife and Parks. The bill authorizes the department to set fees for certain licenses for game management purposes and to issue more than one license in a class. Ellison stated that often times when there is an over population of game, many landowners complain.

FISH AND GAME COMMITTEE

March 10, 1987

Page 5

Senator Jergeson proposed that after a period of two years, it would be wise to require the applicants to hold a traditional license and then the department can judge the situation with proper data in two years.

Senator Severson stated there is no reason to be charged for the first tag that was not filled and then charged for the second tag. The hunter should be charged for the first tag only even though the hunter is not successful, but bags game in the special hunt.

Senator Bishop stated perhaps the intent of the bill is being misconstrued, and from a public relations standpoint, department would not "fire sale" the licenses for a \$1 each. The intent is to constructively address the overpopulation problem. Perhaps, the resident hunter could be charged half price.

Senator Smith asked Marcoux if the Department would hold a public meeting to set the fees. Yes, there would be debate at that time to receive public input. The guide lines, according to Senator Smith, are built in so the local sportsmen would be able to voice ideas concerning licenses and fees. According to Merrill, the Montana Administrative Procedure Act would be implemented.

In line with Senator Severson's motion, the committee passed the BE CONCURRED IN recommendation unanimously.

DISPOSITION OF HOUSE BILL 210:

Senator Jergeson moved the amendment. Page 1, line 20 strike "ARRANGE TO" and Insert on line 21 the "arrange to".

Senator Severson moved the bill as amended. The committee will recommend a BE CONCURRED IN AS AMENDED. The motion carried unanimously.

ADJOURN:

There being no further business to come before the committee, the meeting adjourned at 1:45 P. M.

Ed Smith

SENATOR ED SMITH, CHAIRMAN

ROLL CALL

SENATE COMMITTEE--FISH AND GAME

50TH LEGISLATIVE SESSION - 1987

+++++

Date: _____

NAME	PRESENT	ABSENT	EXCUSED
Senator Ed Smith, Chairman	x		
Senator John Anderson	x		
Senator Judy Jacobson			
Senator Elmer Severson	x		
Senator Greg Jergeson	x		
Senator Al Bishop			x
Senator Esther Bengtson	x		
Senator Wm. Yellowtail Vice-Chair	x		

DATE Feb 10, 1987
ON Senate Fish & Game

Complete Address
and REPRESENTING:

(Please leave prepared statement with Secretary)

HB 210
March 10, 1987

Testimony presented by Jim Flynn, Dept. of Fish, Wildlife & Parks

In 1985 the department established guidelines for its personnel to follow regarding game damage complaints. Following is the first paragraph from our Department Guidelines for Big Game Damage Procedures:

"The Department of Fish, Wildlife & Parks will respond to a damage complaint as soon as possible, and within 48 hours. If the department person who received the complaint is unable to respond within 48 hours, he will immediately refer the complaint to the nearest department employee who can respond within a 48-hour period. Exceptions can be made if complainant is agreeable to a longer waiting period."

Each year the department receives a number of game damage complaints. With few exceptions, the 48-hour goal has been met. The few occasions it is not met are usually the result of having received several complaints at one time or a complication with the 40-hour limitation for Enforcement personnel. The recent court rulings which require overtime for enforcement hours in excess of 40 each week have hampered our abilities in a number of response areas, including game damage. Making the 48-hour requirement statutory would not change the circumstances under which we currently attempt to meet our goal.

We would suggest a change in the bill which we feel would address those few instances when it would not be possible to "investigate and study" within 48 hours:

On page 1, line 20, move the words "arrange to" so they follow the word "shall."

Our guidelines would still apply and the complaints in most instances would still be responded to in 48 hours. However, we fear it is not possible to assure that we could investigate and study each complaint within 48 hours every year.

With this amendment, a more realistic law would be at hand.

SENATE FISH AND GAME

EXHIBIT NO. #1 page 2

DATE 3-10-87

BILL NO. HB 210

AMENDMENT TO HB 210

THIRD READING (BLUE) COPY

PROPOSED BY DEPARTMENT OF FISH, WILDLIFE & PARKS

Page 1, line 20.

Following: "shall"

Insert: "arrange to"

Following: "and"

Strike: "ARRANGE TO"

Montana
Audubon Legislative Fund

Testimony on March 10, 1987 for HB 210
Senate Fish & Game

Mr. Chairman and Members of the Committee,

My name is Janet Ellis and I'm here today representing the Montana Audubon Legislative Fund. The Audubon Fund is composed of members of the National Audubon Society, which includes 2500 members in nine chapters located throughout the state.

We support HB 210 as amended ~~in the House~~ ^{by Rep. Grady}. It is already the Department's policy to respond to game damage complaints within 48 hours. And our research tells us that the Department is doing an excellent job at meeting the 48-hour response time. Because administrative policy changes in the Department and because it is possible to meet that deadline today, we feel that it is appropriate to require this response time statutorily to insure that landowner complaints are handled in a timely fashion.

Thank you.

STANDING COMMITTEE REPORT

March 10, 1987

19.....

MR. PRESIDENT

Fish and Game

We, your committee on.....

House Bill

210

having had under consideration.....

No.....

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REQUIRE INVESTIGATION OF GAME DAMAGE COMPLAINT WITHIN 48 HOURS

Representative Ed Grady (Senator Elmer Severson)

House Bill

210

Respectfully report as follows: That.....

No.....

be amended as follows:

Page 1, line 20.

Following: "shall"

Insert: "arrange to"

Following: "and"

Strike: "ARRANGE TO"

AND AS AMENDED
BE CONCURRED IN
DO PASS

~~XXXXXXXX~~
~~DO NOT PASS~~

Senator Ed Smith

Chairman.